

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

UNITED STATES OF AMERICA,)	CASE NO.: 1:15-CV-01046
)	
Plaintiff,)	
vs.)	JUDGE SOLOMON OLIVER, JR.
)	
CITY OF CLEVELAND,)	
)	<u>CITY OF CLEVELAND'S STATUS</u>
Defendant.)	<u>REPORT TO THE COURT RE:</u>
)	<u>OFFICE OF PROFESSIONAL</u>
)	<u>STANDARDS</u>

I. Introduction

Dual primary goals established by the City and the City's Office of Professional Standards ("OPS") for 2018 are to have OPS (1) remain timely in completing the investigation of all complaints received by the agency on and after December 1, 2017, while (2) simultaneously working with investigative contractor, Hillard-Heintze, to eliminate the backlog of unfinished OPS investigations associated with complaints received in 2015, 2016, and 2017. This report addresses the substantial ongoing progress being made by OPS to meet these objectives using the most recent statistics from OPS for the period through November 21, 2018.

II. OPS investigation of complaints received on and after December 1, 2017

The City currently employs eight (8) permanent OPS investigators and two (2) temporary investigators. The most recent reported OPS data covers the period December 1, 2017 through November 21, 2018. Data for this period establishes that OPS received 225 new complaints for investigation. OPS has completed its work on 148 (67 %) of the 225 new complaints, with 77 of the new complaints remaining currently active. Review of the 148 cases finalized to date establishes that 93 cases were fully investigated by the OPS investigators, 39 of the cases were

administratively dismissed, with the remaining 16 cases having been administratively closed.¹

Of the 77 currently active OPS cases, 63 involve citizen complaints that were received by OPS on or after July 1, 2018. Only five (5) of the 77 currently active cases arise from complaints that were received by OPS during the period December 1, 2017 to April 30, 2018. Of these five cases, OPS closing reports are currently being written on four of these cases, with the remaining case involving a subject officer who only recently returned to the City after extended military leave.

III. Hillard Heintze —Backlog of Investigations

As previously addressed with the Court in August; the City entered into a contract with Hillard Heintze for the purpose of obtaining sufficient investigative expertise that would allow for the completion of investigations associated with the existing backlog of OPS investigations for the period 2015-2017. The use of a qualified outside investigative resource like Hillard Heintze to address the backlog for this period allows the OPS investigators to focus their ongoing efforts on ensuring that the investigations of public complaints received by OPS going forward after December 1, 2017 are timely addressed, investigated, and completed.

Hillard Heintze's work to date toward completing work on the identified backlog has involved two distinct phases of a contemplated three phase process. The first, Phase One, involved Hillard Heintze conducting a comprehensive review and assessment of 282 backlogged

¹ Under Section 701 of the OPS Manual, "administrative dismissal" occurs in cases when the allegations are (a) against someone who is not a CDP employee; (b) when the CDP employee against whom allegations are made cannot be identified despite best efforts; (c) when the allegations include only off-duty conduct of a civil nature; and (d) when the allegations concern receipt of a traffic or parking citation with no other allegations made. "Administrative closure" occurs in circumstances (a) where a new case is duplicative of a prior case already received by OPS or, (b) where the allegations of a new case received by OPS are determined to raise new but similar allegations involving the same persons where an OPS case already exists, the new case is closed with the new allegations being consolidated under the already existing OPS case number.

investigations for complaints received by OPS during the 2015-2017 time period. The City's earlier filed August 15, 2018 Status Report (Dkt.215) addressed the results of Hillard Heintze's case file reviews and assessments. This initial phase allowed the company to better understand the scope and quality of the investigation activities that had been completed to date in each of the cases.

Following the completion of Phase One, the City entered into a second contract with Hillard Heintze for the completion of Phase Two of the anticipated three part effort to finalize work on the backlogged complaints. Hillard Heintze is midway through the second phase, which includes a review and realistic determination of the evidentiary considerations presented in each case. The evidentiary evaluation allows for the closure of case files where it is determined that the evidence that would be necessary for an investigation to proceed does not exist. Where sufficient evidence is determined to exist, the Phase Two evaluation allows Hillard Heintze to develop the appropriate investigation plan to be followed by its investigators in the upcoming Phase Three. At this time, 196 of the forwarded case files having been assigned for Phase Two investigatory review.

To date Hillard Heintze has closed and forwarded 37 cases to OPS associated with complaints that had been received in 2016 and 2017. This includes identified cases that have been closed where necessary evidence does not exist and, to date, nine (9) cases² for OPS administration review where the Hillard Heintze investigators have recommended sustaining the complaint allegations.

Hillard Heintze has continued during this period to work closely with and build upon its

² While a small number of backlogged cases were close to completion at the time the files were transferred to Hillard Heintze; based on its initial review of the OPS backlog files Hillard Heintze has concluded that for the majority of the cases the investigations would need to start from the beginning.

working relationship with OPS. OPS has been able to coordinate and provide Hillard Heintze with direct access to the Cleveland Division of Police's ("CDP") IA Pro system³ in the same manner that is used by OPS to enter and track citizen complaints. This access allows Hillard Heintze investigators to upload investigation-related documents directly into the IA Pro system, and provides the OPS administrators with the ongoing capability to review investigation work product. Most recently Hillard Heintze has also been provided access to CDP's Law Enforcement Records Management System ("LERMS"). This allows for direct investigator access to evidentiary materials that are associated with incident reports prepared by CDP officers. Hillard Heintze has also established an email and phone messaging system for responding to public requests for information concerning the backlogged complaint investigations. Through the end of October Hillard Heintze had responded to 21 such inquiries.

Phase Three

Based on the Phase Two reviews, Hillard Heintze is currently estimating that approximately 200 of the referred backlogged cases will require Phase Three investigations. The City will contract with Hillard Heintze for Phase Three, with finalization of the contract language and requisite City Council approval anticipated in early 2019.

Investigations in Phase Three will be accompanied by a work plan and anticipated budget that is informed by the Phase Two review. Investigations completed in Phase Three will include interviews, obtaining locally sourced evidence identified in Phase Two, and, completion of all OPS required investigative steps necessary to close an investigation. Hillard Heintze will be on the ground in Cleveland conducting necessary work to close the backlogged investigations and will document each investigation, recommend an appropriate finding, and ensure the results are

³ IA Pro is the software program management tool that has been adopted by CDP to allow the Division to electronically enter, track and maintain all in-house investigations.

uploaded to IA Pro as a completed investigation. OPS retains approval authority for the work to be undertaken by Hillard Heintze in each case.

IV. Conclusion

OPS has continued to make important strides this calendar year in remaining current on complaints, while Hillard Heintze continues its efforts to timely address the 2014-2017 backlog in a methodical and logical manner. The City and OPS continue to work to ensure the standards of professional service owed to the public and the members of the Cleveland Division of Police are met.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned certifies that the “City of Cleveland’s Status Report to the Court Re: Office of Professional Standards” was filed electronically on December 3, 2018. Notice of this filing will be sent to all parties by operation of the Court’s electronic filing system. Parties may access this filing through the Court’s system. Pursuant to the requirements of the Consent Decree the Monitor Team has been delivered a copy of this filing.

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